U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34903412

Date: NOV. 18, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a voice actor who seeks classification as an individual of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he satisfied at least three of the ten initial evidentiary criteria. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

First, we will address the Petitioner's motion to reopen, which must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, although the Petitioner disputes our decision to dismiss the appeal, he does not state new facts or offer new evidence. As such, the Petitioner has not satisfied the requirements of a motion to reopen.

Next, we will address the Petitioner's motion to reconsider, which must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision, asserting that it "does not align with" with the preponderance of the evidence standard set forth in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Petitioner contends that "fair and proper application" of this standard should lead to a favorable outcome regarding his eligibility.

Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See id.*; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the governing standard of proof in this, and in most administrative immigration proceedings. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for the extraordinary ability classification, he does not further explain or identify a specific instance in which we applied a standard of proof other than the preponderance of evidence in dismissing the appeal.

The Petitioner also reiterates the two-part process for evaluating evidence under this classification, arguing that we erred by not conducting a totality of the evidence analysis to determine whether the Petitioner achieved sustained national or international acclaim. As the Petitioner himself acknowledges, the first step in this two-part process is demonstrating that he meets at least three of the initial evidentiary criteria. Our prior decision includes a comprehensive analysis which addresses two of the Petitioner's claimed criteria and outlines the evidentiary deficiencies that caused us to conclude that he did not meet the requirements of those criteria and therefore did not successfully satisfy the initial part of the two-part process. We then explained that because the Petitioner did not establish that he satisfied this first step in a two-step process, we need not go forward with the second step, which calls for the totality of the evidence analysis the Petitioner references on motion and which is part of a final merits determination set forth in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). The Petitioner has offered no cogent legal argument establishing that we incorrectly applied the law or USCIS policy by reserving the totality of the evidence analysis in this case.

The Petitioner also argues that we reached an incorrect conclusion on the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (x), which served as our basis for dismissing the appeal. However, aside from disagreeing with our adverse conclusions on these criteria, the Petitioner does not explain how we erred in applying the law or USCIS policy.

For instance, we determined that the Petitioner did not show he meets all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published material about the Petitioner and his work in professional or major trade publications or other major media. Namely, we determined that the Petitioner did not establish that the article in question is about him, even though it mentions him in his role as dubbing director. We also determined that while the Petitioner submitted online traffic and rankings from SimilarWeb for uol.com.br, the internet platform used by the website where the Petitioner's article is posted, the Petitioner did not provide evidence establishing the major media status of the website itself.

On motion, the Petitioner merely references "[t]he article from uol.com.br" but he does not provide the name of the article in question or address the evidentiary deficiencies we highlighted. Instead, the Petitioner focuses on his "significant recognition" and "acknowledgement within the voice acting

industry," which are not relevant to a determination of whether he satisfied the specific elements comprising the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Thus, the Petitioner has not identified legal error in our analysis and determination concerning this criterion.

The Petitioner also challenges our determination concerning the criterion at 8 C.F.R. § 204.5(h)(3)(x), which requires evidence of the Petitioner's commercial success in the performance arts. We noted that this criterion focuses on volume of sales and box office receipts as a measure of commercial success and we determined that while the record contains evidence of the Petitioner's performance as a voice actor in television and films, it does not demonstrate that the success of the projects the Petitioner worked on was attributable to his specific work.

On motion, the Petitioner disagrees with our determination and argues that we must consider "the collective impact of evidence," citing *Kazarian v. USCIS*, 596 F.3d 1115, to support this contention. However, as previously explained, on appeal we determined that there was no need to conduct a totality of the evidence analysis in a final merits determination since the Petitioner did not establish that he met the threshold requirement of demonstrating that he satisfied at least three of the initial evidentiary criteria. Here, the Petitioner has not established that we erred in foregoing a final merits determination under the given circumstances, nor has he identified legal error in our analysis and determination concerning the criterion at 8 C.F.R. § 204.5(h)(3)(x). And although the Petitioner asserts that we erred by not "adequately consider[ing] the collective impact" of his contributions, he cites no law or USCIS policy to support the contention that collective impact of contributions is a factor we must consider to determine whether he satisfied this criterion.

As stated earlier, the Petitioner has not offered new facts or submitted additional evidence in support of the motion to reopen. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.